NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA

NSC-D/LOS # 525

MEMORANDUM January 20, 1976

UNCLASSIFIED WITH SECRET ATTACHMENTS

TO : Members of the LOS Executive Group

SUBJECT : Comments on the Draft Memorandum to the President

Attached for your information are letters from the Treasury, the Department of Commerce, CIEP and OMB containing comments on issues relating to the LOS negotiations and prepared in connection with the draft memorandum to the President on the instructions for the next session of the Law of the Sea Conference in March 1976.

Otho E. Eskin

Otho E. Eskin
Staff Director

Attachments:

As stated.

Note Par Kr memo

OVER

UNCLASSIFIED WITH SECRET ATTACHMENTS

Page Denied

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

SECRET (derived)

DEC 24 1975

Dear Bob:

I have reviewed the draft memorandum to the President submitting proposed instructions to the U.S. delegation to the March session of the U.N. Conference on the Law of the Sea. I agree that no new changes in the present instructions are required for that session. However, I believe that certain areas of the existing instructions are ambiguous and need further elaboration in order to provide sufficient guidance to the delegation. In my view, the Task Force should work to develop the appropriate additional guidelines on the issues cited in the draft memorandum, such as vessel pollution. In addition, issues relating to overall U.S. commodity policy -- the question of adequate protection for the U.S. interests in the structure and voting procedures of the Authority and guaranteed, non-discriminatory access by U.S. firms under reasonable conditions to all areas of the deep seabed -- need further examination.

The present instructions do not offer the detailed policy guidance the delegation needs to assure that negotiating positions in Committee I are consistent with overall U.S. commodity policy and the fundamental U.S. negotiating objective of assuring "guaranteed non-discriminatory access by U.S. firms to deep seabed resources under reasonable terms, coupled with security of tenure."

LDC pressure to increase their control over raw materials production and trade increasingly impinges on the deep seabed negotiations. At recent intersessional negotiations in New York, LDC negotiating strategy focused on two related commodity issues: (1) participation by International Seabed Resource Authority (ISRA) in any international commodity agreements that might be negotiated for seabed minerals and (2) compensatory financing for land-based producers.

SECRET (derived)

We believe that proposals that relate to international commodity agreements raise serious issues of overall U.S. commodity policy which should be discussed in the context of the Commodity Policy Coordinating Committee. Moreover, ISRA's participation in any international commodity agreement which directly or indirectly controls production or prices is inconsistent with present negotiating instructions and overall U.S. commodity policy.

If accommodation of land-based producers' interests is required, compensatory financing rather than commodity agreements should be used. The delegation's position is that existing compensatory financing facilities (such as that of the IMF) can provide more comprehensive and effective remedies for land-based producers than comprehensive commodity production control or pricing arrangements. Land-based producers faced with balance of payments and loss of export earnings difficulties resulting from seabed production should avail themselves of compensatory financing funds which the IMF provides. The IMF facility is in the process of being further liberalized. The Authority would be free to augment the Fund's facility with additional resources.

The current instructions authorizing adjustment assistance should only be exercised as a final fall-back position, provided that OMB and other agencies responsible for international commodity policy have approved the proposal.

I understand that CIEP, Commerce, and OMB concur in our views on this important commodity-related issue and have proposed similar guidelines to the delegation.

One major section of the instructions where significant differences in interpretation remain is the voting structure and powers of the Authority. I call these two issues one because they are inextricably linked: we cannot decide what level of voting protection is acceptable, in general or within any particular chamber, until we know the extent of its power.

Treasury is reluctant to propose specific amendments to the voting provisions, because any comments at this time may subsequently prove too harsh or too weak. Our experience has been that the text changes frequently in the course of negotiations. Under these circumstances, we might agree to the current composition of the Economic Planning Commission at this time only to find that its powers are enlarged in negotiations to the point where more voting protection is needed. Alternatively, we might object to the one-member-one vote system in the Assembly, and then find that its powers have been sufficiently circumscribed so that this voting system is acceptable. Thus in the absence of a final text, any comments on the voting system at this time may subsequently prove misleading.

Nevertheless, I realize that the head of the delegation requires some form of guidance. Perhaps the best approach would be for the Task Force to study the type of voting protection we consider acceptable in other commodity-related negotiations.

Over the past 15 years, one type of voting system has found acceptance in most commodity agreements where developing countries have participated. This system is based on a bicameral chamber -- producers in one and consumers in the other. Voting is weighted according to each member's production or consumption. Decisions require the approval of either a simple majority or two thirds of each chamber, depending upon the importance of the vote. The most recent examples of this system are to be found in the Tin Agreement, concluded in July, 1975 and the Cocoa Agreement concluded in October, 1975. It is also the basis of the current Coffee Agreement and the most recent Sugar Agreement.

The effect of this voting system is to assure that the U.S., in most commodity agreements where it participates, can block a vote, alone or with the support of one other major power. This system falls short of the veto power we hold in the U.N., but is commensurate with the limited national interest in individual commodity negotiations. The level of national interest in the deep seabed negotiations is, of course, several orders of magnitude higher.

The Task Force should consider how best to achieve voting protection comparable to that which we have achieved in other commodity-related negotiations with developing countries. Perhaps a weighted voting system would be the best approach. If this proves unacceptable, perhaps the provisions of Article 27-6 can be strengthened to require a simple majority of all the categories of members specified in 27-1, or a two-thirds majority of a lesser number. Another approach would be to strengthen our voting position in the Assembly by adopting a mechanism similar to that proposed for the Council and require joint approval for all major decisions. There are undoubtedly other approaches. The Task Force should study them.

I want to affirm the mandate of the existing instructions that the U.S. objective is to assure "guaranteed non-discriminatory access by U.S. firms to deep seabed mineral resources under reasonable terms coupled with security of tenure." This is a fundamental U.S. objective in the deep seabed negotiations and has been affirmed in a speech by Secretary Kissinger. I emphasize that fulfillment of this objective precludes U.S. acceptance of a quota system which would impose limits on either the number of mine sites or the amount of area which would be awarded to any one state or its nationals in specified time periods. Likewise, I would find any system that allows unrestricted exploration or exploitation in only part of the deep seabed -- the so-called banking system -- equally unacceptable. We would similarly object to any variant system for reserving areas including the reservation of areas for exclusive exploitation by the Enterprise, either directly or through joint ventures with private firms or states parties.

Furthermore, I believe the degree of revenue-sharing that is acceptable to the U.S. under the instructions needs further study. While accommodating the interests of the LDCs, it is essential that the deep seabed regime would provide a satisfactory investment climate for U.S. firms to encourage mining activities.

SECRET (derived)

Therefore, Treasury agrees that no changes or additions are required in the existing instructions, but strongly urges that the Task Force or other appropriate group focus on and refine the issues identified above. It is essential that at the next session of the Law of the Sea Conference, the U.S. negotiating objectives, directed by the instructions, and interpreted by the delegation, reflect overall U.S. commodity policy objectives.

Sincerely yours,

Jerry

Gerald L. Parsky

Mr. Robert Ingersoll
Deputy Secretary
Department of State
Room 7220
2201 C Street, N.W.
Washington, D.C. 20520

O.M.B.

Questions on Committee I Negotiations

1. Access to Reserved Areas

- Do present instructions allow negotiat~~ions~~ors to abandon non-discriminatory access in reserved areas?

- If ISRA is capable of limiting U.S. firm's access to reserved areas, can U.S. mineral needs be fully met by operations in the non-reserved areas?

- What criteria will be used in licensing firms in reserved areas?

2. Access to non-reserved areas

- Can non-discriminatory access to non-reserved areas be guaranteed if specific revenue sharing and/or mandatory joint venture provisions are left to be negotiated?

- At what point will mandatory revenue sharing and/or joint ventures cause industry to abandon further investment in seabed mining?

- In case of contending claims in non-reserved areas, what specific criteria will be used by which arbitration body to insure fair competition between firms?

3. Tax incentive

- What types of tax incentive are required to make seabed mining profitable at various levels of profit sharing with ISRA? What are the costs in unearned revenues?

- Can tax credits be sold to the Hill?

4. Production Controls/Commodity Agreements in Reserved Areas

- Can the U.S. expect ISRA not to control production in areas reserved for ISRA use?

- Would reduced production in reserved areas lead to increased production in non-reserved areas, resulting in incentive for ISRA to limit its production controls?

- If ~~the Enterprise~~ ISRA can commit all miners in reserved areas to a commodity agreement resulting in production controls; is that substantially different from allowing ISRA to unilaterally declare production controls?

5. Production Controls/Commodity Agreements in Non-Reserved Areas

- Do present U.S. negotiating instructions allow even limited ISRA production controls in non-reserved areas if controls are implemented against the USG will?

- If the U.S. joins a commodity agreement including seabed minerals, does the U.S. or ISRA implement the agreement? If ISRA implements the agreement, could it result in stricter production controls for U.S. firms than under USG implementation?

6. Voting Protection

- Under the present U.S. text, ~~how~~ could the Assembly usurp the Council's authority to (a) determine the policies of the authority with respect to the activities of the area; (b) recommend appointment of the Tribunal; (c) supervise implementation of provisions of part I of the treaty; and (d) approve contracts, etc?

- Is it negotiable to require a majority of 4 of the 5 assembly categories on issues of substance? Would we have the votes?

- Do we have the 10 votes needed to block action by the Council? If 26 votes are needed to initiate action, do we have those votes?

7. Relationship of ISRA to the Enterprise

- Under a parallel system, how do you insure that ISRA will not be biased in favor of the Enterprise?

- Under a banking system with Enterprise activities limited to reserved areas, is it necessary to separate the Enterprise from ISRA?

8. Compensation for Land-based Producers

- Is it too late to sell LDCs on the idea that the IMF trust fund will provide adequate compensation?

- How will the costs to land-based producers be measured? What are they likely to be on an annual basis?

- Will compensation be paid in a lump sum? How many years damages will it cover? Will it be loan or grant?

- Will compensation be tied to specific adjustment assistance measures?

- If the negative impact on land-based producers takes place in 10-15 years, is adjustment assistance justified?

9. Funding issues

- How large an assessed contribution for ISRA will be required for how long?

- Can revenues gained from profit sharing possibly meet administration, compensation, Enterprise operation, and resource transfer costs?

THE SECRETARY OF THE TREASURY
WASHINGTON 20220

JAN 9 1976

SECRET (Derived)

Dear Bob:

I have reviewed your draft memorandum to the President concerning recommended changes in existing instructions to the U.S. Delegation for the March session of the United Nations Conference on the Law of the Sea. This memorandum is substantially the same as your previous memorandum on this subject dated December 2. As indicated in the comments (attached) we sent you on December 24 concerning that memorandum, we agree with the recommendation that no new changes in the present instructions are required for the upcoming session.

While we agree that no changes in the instructions are required, we are concerned that certain U.S. proposals are not in line with the instructions (see attachment). There are three areas of prime concern: our proposals and position on the voting structure of the International Authority; non-discriminatory access by U.S. firms to the deep seabed; and the levels of revenue sharing with the Authority.

Our current position, for example, would seem to accept an International Authority with a voting structure unlike any major international institution except perhaps the United Nation's General Assembly, a forum where our voice has seldom been heard in recent years.

In order to provide our delegations with adequate guidance next March, I would again urge, as we have in our previous correspondence, that the Law of the Sea

SECRET (Derived)

Interagency Task Force immediately undertake a study to ensure that the Delegation's proposals, in the areas we have identified and any others which may raise doubts, are fully in line with the Delegation's instructions.

Sincerely yours,

(Signed) Steve

Stephen S. Gardner
Acting Secretary

The Honorable
Robert Ingersoll
Deputy Secretary
Department of State
Room 7220
2201 C Street, N.W.
Washington, D.C. 20520

Attachment